In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 719

ANTHONY J. SCHERER, JR., PETITIONER

v.

THOMAS BRENNAN AND NICK NOACK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

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1. Petitioner seeks to recover $100,000 in damages from respondents, two Treasury Department special investigators, for activities undertaken by them in connection with their assignment to protect the life of the President of the United States. His contention is that their conduct in the course of carrying out this assignment constituted an unlawful trespass on his property and resulted in false imprisonment and deten-

tion, and unlawful interference with his right of access to his home and property.

The facts are undisputed. On October 7, 1964, the President was at the O'Hare Inn in Chicago. Petitioner, a licensed dealer in firearms, resided 300 yards from the O'Hare Inn. He was known to have within his home several rifles, a machine gun, a cannon that could penetrate a concrete wall, and ammunition for the weapons. In making plans for the President's protection, Michael Torina, the Special Agent in Charge of the Secret Service Office in Chicago, asked respondents' superior, Cecil Wolfe, the Acting Chief of the Alcohol and Tobacco Tax Division's Enforcement Branch in Chicago, to provide assistance[1] and, specifically, to keep petitioner under surveillance and away from his weapons (App. App. 15, 20).[2] Respondents were then directed to keep petitioner under surveillance as long as the President remained at the Inn. Following their instructions, they drove to his home and waited in their car until he returned. When petitioner arrived, the agents attempted to persuade him to stay at a nearby motel for the night at government expense, or to allow the agents to remain with him at his home, or at least to relinquish possession of his weapons for the evening. Petitioner refused to cooperate in any of these ways (App. App. 16-17, 21), and then left the scene. He returned to his home somewhat later and was able to gain entry without interference

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[1] Officials of the Secret Service, charged with the primary responsibility for safeguarding the President, are authorized by the Secretary of the Treasury to call on other agencies of the Treasury Department for assistance in carrying out protective assignments.

[2] "App. App." references are to appellant's appendix in the court of appeals, which has been filed in this Court.

by the respondents, who remained on duty in their car parked in front of petitioner's house until they were relieved by Secret Service Officers.

In the district court, respondents submitted their own affidavits setting forth a detailed account of their activities in connection with the surveillance of petitioner (App. App. 14-24). They also filed affidavits given by Torina and Wolfe averring that respondents were authorized to keep petitioner under surveillance as part of the presidential protection program (App. App. 12-14). Wolfe, respondents' superior, certified that the respondents acted in accordance with the instructions he had given them. On the basis of these affidavits, respondents moved for summary judgment. In response, petitioner made the bare assertion that the respondents were not acting within their authority, but he filed no counter-affidavits and did not "set forth specific facts showing that there [was] a genuine issue for trial" as required by Rule 56(e), F.R. Civ. P.

The district court entered summary judgment in respondents' favor (Pet. App. 9). The court of appeals affirmed, stating: "It is clear that [respondents] were immune from this tort suit because their actions fell within the scope of their duties to protect the person of the President of the United States." 379 F. 2d 609, 611 (Pet. App. 1, 4). On July 14, 1967, a petition for rehearing was denied (Pet. App. 8).

2. This Court has long recognized that federal officials must be free to perform their official duties without fear that they may be subjected to tort liability and for this reason the Court has consistently ruled that they may not be held personally liable for

acts committed within the general scope of their official authority and in pursuance of their official duties. *E.g., Howard* v. *Lyons,* 360 U.S. 593; *Barr* v. *Matteo,* 360 U.S. 564.[3] This immunity applies provided the act complained of was performed, at the very least, "within the outer perimeter of [the official's] line of duty * * *." *Barr* v. *Matteo, supra,* at 575. Respondents' activities certainly fell within the boundaries of conduct appropriate to the fulfillment of their assigned responsibility.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER, 1967.

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[3] *Land* v. *Dollar,* 330 U.S. 731; *United States* v. *Lee,* 106 U.S. 196; and *Mitchell* v. *Harmony,* 54 U.S. 115, relied upon by petitioner, are inapposite here. Those cases did not involve tort damages, but rather were actions to recover possession of property, or its value, from officers who had wrongfully seized or retained possession of it. There is no claim in this case that respondents or the United States hold property rightfully belonging to petitioner.

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